

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARIA DESOUSA, On Behalf of Herself And : Civil Action No. 08-CV-6626  
All Others Similarly Situated, :  
Plaintiff, :  
vs. :  
LEHMAN BROTHERS HOLDINGS INC., :  
RICHARD S. FULD, JR., ERIN M. CALLAN, :  
WENDY M. UVINO, MICHAEL L. AINSLIE, :  
JOHN F. AKERS, ROGER S. BERLIND, :  
THOMAS H. CRUIKSHANK, MARSHA J. :  
EVANS, SIR CHRISTOPHER :  
GENT, JERRY A. GRUNDHOFER, :  
ROLAND A. HERNANDEZ, HENRY :  
KAUFMAN, JOHN D. MACOMBER, THE :  
EMPLOYEE BENEFIT PLAN COMMITTEE, :  
THE COMPENSATION AND BENEFITS :  
COMMITTEE, JOHN DOES 1-20, :  
Defendants. :  
:

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[Additional Captions Follow]

**NOTICE OF MOTION OF PLAINTIFF MARIA DESOUSA FOR  
CONSOLIDATION, APPROVAL OF THE PROPOSED LEADERSHIP STRUCTURE,  
ENTRY OF [PROPOSED] PRETRIAL ORDER NO. 1 AND RESPONSE IN  
OPPOSITION TO THE RESPECTIVE COMPETING MOTIONS OF PLAINTIFFS  
RINEHART/ FONG AND PLAINTIFF BUZZO**

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ALEX E. RINEHART, On Behalf of Himself And : Civil Action No. 08-CV-5598 (LAK)  
All Others Similarly Situated, :

Plaintiff, :

vs. :

LEHMAN BROTHERS HOLDINGS INC., :  
RICHARD S. FULD, JR., MICHAEL L. :  
AINSLIE, JOHN F. AKERS, ROGER S. :  
BERLIND, THOMAS H. CRUIKSHANK, :  
MARSHA JOHNSON EVANS, SIR :  
CHRISTOPHER GENT, ROLAND A. :  
HERNANDEZ, HENRY KAUFMAN, JOHN D. :  
MACOMBER, ERIN M. CALLAN, WENDY M. :  
UVINO, THE EMPLOYEE BENEFIT PLANS :  
COMMITTEE, and JOHN DOES 1-10, :

Defendants. :

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JO ANNE BUZZO, Individually And On Behalf : Civil Action No. 08-CV-6245 (UA)  
of All Others Similarly Situated, :

Plaintiff, :

vs. :

LEHMAN BROTHERS HOLDINGS INC., :  
WENDY M. UVINO, LEHMAN BROTHERS :  
HOLDINGS INC. EMPLOYEE BENEFIT :  
PLANS COMMITTEE, JOHN DOES 1-10, :  
HENRY KAUFMAN, JOHN F. AKERS, ROGER :  
S. BERLIND, MARSHA JOHNSON EVANS and :  
ROLAND A. HERNANDEZ, :

Defendants. :

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[Additional Caption Follows]

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	x
MONIQUE MILLER FONG, On Behalf Of	:
Herself And All Others Similarly Situated,	:
Plaintiff,	:
vs.	:
LEHMAN BROTHERS HOLDINGS INC.,	:
RICHARD S. FULD, JR., MICHAEL L.	:
AINSLIE, JOHN F. AKERS, ROGER S.	:
BERLIND, THOMAS H. CRUIKSHANK,	:
MARSHA JOHNSON EVANS, SIR	:
CHRISTOPHER GENT, JERRY A.	:
GRUNDHOFER, ROLAND A. HERNANDEZ,	:
HENRY KAUFMAN, JOHN D. MACOMBER,	:
ERIN M. CALLAN, WENDY M. UVINO, THE	:
EMPLOYEE BENEFIT PLANS COMMITTEE,	:
and JOHN DOES 1-10,	:
Defendants.	:

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PLEASE TAKE NOTICE that Plaintiff Maria DeSousa (“movant”) by her counsel, will hereby move this Court on a date and at such time as may be designated by the Court, at 500 Pearl Street, New York, New York for an Order: (i) consolidating the above-captioned actions; (ii) appointing Milberg LLP and Zimmerman Reed P.L.L.P. as Interim Co-Lead Counsel, and Lockridge Grindal Nauen P.L.L.P. and Harwood Feffer LLP as Executive Committee Members; (iii) denying (a) Wolf Haldenstein Adler Freeman & Hertz LLP and Gainey & McKenna’s Joint Motion to appoint Wolf Haldenstein Adler Freeman & Hertz LLP and Gainey & McKenna as Interim Class Co-Counsel, and (b) Izard Nobel LLP’s motion for appointment of Jo Anne Buzzo as Interim Lead Plaintiff, Izard Nobel LLP as Interim Lead Counsel and Sarraf Gentile LLP as Interim Liaison Counsel; and (iv) granting such other and further relief as the Court may deem

just and proper. In support of this Motion, movant submits herewith a Memorandum of Law, [Proposed] Pre-Trial Order and the Declaration of Lori G. Feldman, dated July 28, 2008.

DATED: July 28, 2008

Respectfully submitted,

MILBERG LLP

By: /s/ Lori G. Feldman

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Class*

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*Attorneys For Plaintiff Maria DeSousa and  
Proposed Executive Committee Members*

**CERTIFICATE OF SERVICE**

I, Sara E. Fuks, an associate with the law firm Milberg LLP, hereby certify that I caused a true and correct copy of the following documents to be served with the Clerk of the Court using the CM/ECF system, which will send notifications of filing to the CM/ECF participants listed on the attached Service List, and caused all counsel listed on the Service List to be served by regular U.S. Mail on this 28<sup>th</sup> day of July 2008:

1. Notice of Motion of Plaintiff Maria DeSousa for Consolidation, Approval of the Proposed Leadership Structure, Entry of [Proposed] Pretrial Order No. 1 and Response In Opposition To the Respective Competing Motions of Plaintiffs Rinehart/Fong and Plaintiff Buzzo;
2. Declaration of Lori G. Feldman in Support of the Motion of Plaintiff Maria DeSousa for Consolidation, Approval of the Proposed Leadership Structure, Entry of [Proposed] Pretrial Order No. 1 and Response In Opposition To the Respective Competing Motions of Plaintiffs Rinehart/Fong and Plaintiff Buzzo;
3. Memorandum of Law in Support of Plaintiff Maria DeSousa's Motion for Consolidation, Approval of the Proposed Leadership Structure, Entry of [Proposed] Pretrial Order No. 1 and Response in Opposition To the Respective Competing Motions of Plaintiffs Rinehart/Fong and Plaintiff Buzzo; and
4. [Proposed] Pre-Trial Order No. 1 Consolidating ERISA Actions and Approving Proposed Leadership Structure.

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/s/ Sara Fuks

Sara Fuks

*Lehman Brothers Holdings Inc. (ERISA)*

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARIA DESOUSA, On Behalf of Herself And : Civil Action No. 08-CV-6626  
All Others Similarly Situated, :  
Plaintiff, :  
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LEHMAN BROTHERS HOLDINGS INC., :  
RICHARD S. FULD, JR., ERIN M. CALLAN, :  
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JOHN F. AKERS, ROGER S. BERLIND, :  
THOMAS H. CRUIKSHANK, MARSHA J. :  
EVANS, SIR CHRISTOPHER :  
GENT, JERRY A. GRUNDHOFER, :  
ROLAND A. HERNANDEZ, HENRY :  
KAUFMAN, JOHN D. MACOMBER, THE :  
EMPLOYEE BENEFIT PLAN COMMITTEE, :  
THE COMPENSATION AND BENEFITS :  
COMMITTEE, JOHN DOES 1-20, :  
Defendants. :  
:

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[Additional Captions Follow]

**[PROPOSED] PRE-TRIAL ORDER NO. 1 CONSOLIDATING  
THE ERISA ACTIONS AND APPOINTING INTERIM CLASS COUNSEL**

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ALEX E. RINEHART, On Behalf of Himself And : Civil Action No. 08-CV-5598 (LAK)  
All Others Similarly Situated, :

Plaintiff, :

vs. :

LEHMAN BROTHERS HOLDINGS INC., :  
RICHARD S. FULD, JR., MICHAEL L. :  
AINSLIE, JOHN F. AKERS, ROGER S. :  
BERLIND, THOMAS H. CRUIKSHANK, :  
MARSHA JOHNSON EVANS, SIR :  
CHRISTOPHER GENT, ROLAND A. :  
HERNANDEZ, HENRY KAUFMAN, JOHN D. :  
MACOMBER, ERIN M. CALLAN, WENDY M. :  
UVINO, THE EMPLOYEE BENEFIT PLANS :  
COMMITTEE, and JOHN DOES 1-10, :

Defendants. :

---

JO ANNE BUZZO, Individually And On Behalf :  
of All Others Similarly Situated, :

Plaintiff, :

vs. :

LEHMAN BROTHERS HOLDINGS INC., :  
WENDY M. UVINO, LEHMAN BROTHERS :  
HOLDINGS INC. EMPLOYEE BENEFIT :  
PLANS COMMITTEE, JOHN DOES 1-10, :  
HENRY KAUFMAN, JOHN F. AKERS, ROGER :  
S. BERLIND, MARSHA JOHNSON EVANS and :  
ROLAND A. HERNANDEZ. :

Defendants. :

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[Additional Caption Follows]

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MONIQUE MILLER FONG, On Behalf Of	:
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HENRY KAUFMAN, JOHN D. MACOMBER,	:
ERIN M. CALLAN, WENDY M. UVINO, THE	:
EMPLOYEE BENEFIT PLANS COMMITTEE,	:
and JOHN DOES 1-10,	:
	:
Defendants.	:
	:

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**WHEREAS**, the above-referenced actions (collectively, the “ERISA Actions”) allege breaches of fiduciary duties in violation of the Employee Retirement Income Security Act of 1974 (“ERISA”) involving the Lehman Brothers Holdings, Inc. 401(k) Savings Plan (“Plan”), a retirement plan established as a benefit for Lehman Brothers Holdings, Inc. (collectively, “Lehman Brothers” or “the Company”) employees, and such actions involve common allegations;

**WHEREAS**, appointment of interim Lead Plaintiff and Co-Lead Counsel is appropriate and consistent with the recommendations of the *Manual for Complex Litigation* (4th ed. 2004) and Fed. R. Civ. P. 23(g)(2);

**NOW, THEREFORE, THE COURT ORDERS** as follows:

**CONSOLIDATION OF RELATED ACTIONS**

1. The ERISA Actions and any action arising out of the same operative facts now pending or hereafter filed in or transferred to this Court are hereby consolidated pursuant to Fed. R. Civ. P. 42(a) (“Consolidated Action”). They shall be referred to collectively as *In re Lehman Brothers ERISA Litigation*, Master File No. 08-CV-6626.

**CAPTION OF CASES**

2. Every pleading filed in the Consolidated Action shall bear the following caption:

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE LEHMAN BROTHERS ERISA LITIGATION	)	MASTER FILE NO.: 08-CV-6626
	)	
	)	
THIS DOCUMENT RELATES TO:	)	
	)	
	)	

3. When a pleading or other court paper filed in the Consolidated Action is intended to apply to all actions therein, the words “All Actions” shall appear immediately after the words “THIS DOCUMENT RELATES TO:” in the caption set out above. When a pleading or other court paper is intended to be applicable to less than all such actions, the party filing the document shall indicate, immediately after the words “THIS DOCUMENT RELATES TO:” the action(s) to which the document is intended to be applicable by last name of the plaintiff(s) and the docket number(s).

**MASTER DOCKET**

4. A Master Docket is hereby established for the Consolidated Action, including actions subsequently consolidated herein pursuant to this Order. Entries in said Master Docket shall be applicable to the Consolidated Action, and entries shall be made therein in accordance with the regular procedures of the Clerk of this Court, except as modified by this Order.

5. When a pleading is filed and the caption, pursuant to this Order, shows that it is applicable to "All Actions," the Clerk shall file such pleading in the Master File and note such filing in the Master Docket. No further copies need be filed nor other docket entries made.

6. When a paper is filed and the caption shows that it is applicable to fewer than All Actions, the Clerk shall file the original of the paper in the Master File and a copy in the file of each separate action to which it applies and shall note such filing in the Master Docket and in the docket of each separate action. The party filing such paper shall supply the Clerk with sufficient copies of any such paper to permit compliance with this paragraph.

#### **MASTER FILE AND SEPARATE ACTION FILES**

7. A Master File is hereby established for the consolidated proceedings in the Consolidated Action. The Master File shall be Civil Action No. 08-CV-6626. The original of this Order shall be filed by the Clerk in the Master File herein established. The Clerk shall maintain a separate file for each action consolidated herein and filings shall be made in accordance with the regular procedures of the Clerk of this Court, except as modified by this Order. The Clerk shall file a copy of this Order in each such separate file. The Clerk shall mail a copy of this Order to counsel of record in each of the actions consolidated herein.

#### **NEWLY-FILED OR TRANSFERRED ACTIONS**

8. When a case that arises out of the same operative facts as the Consolidated Action is hereinafter filed in or transferred to this Court, it shall be consolidated as provided in Section I above and the Clerk of this Court shall:

- File a copy of this Order in the separate file for such action;
- Mail a copy of this Order to the attorneys for the plaintiff(s) in the newly-filed or transferred case and to any new defendant(s) in the newly-filed or transferred case; and
- Make the appropriate entry in the Master Docket.

9. The Court requests the assistance of counsel in calling to the attention of the Clerk of this Court the filing or transfer of any case that might properly be consolidated as part of this litigation.

**APPLICATION OF THIS ORDER TO SUBSEQUENT CASES**

10. This Order shall apply to each class action assigned to the undersigned alleging claims similar to those set forth in these actions and brought on behalf of participants in or beneficiaries of the Plan. This Order shall apply to each such case which is subsequently filed in or transferred to this Court, and which is assigned to the undersigned, unless a party objecting to the consolidation of that case or to any other provision of this Order serves an application for relief from this Order or from any of its provisions within ten (10) days after the date of service of this Order on counsel of that party. The provisions of this Order shall apply to such action pending the Court's ruling on the application.

11. Unless a plaintiff in a subsequently filed or transferred case is permitted by the Court to use a separate complaint, defendants shall not be required to answer, plead or otherwise move with respect to that complaint. If a plaintiff in any such case is permitted to use a separate complaint, each defendant shall have thirty (30) days from the date the Court grants such permission within which to answer, plead or otherwise move with respect to that complaint.

**APPOINTMENT OF INTERIM LEAD PLAINTIFF**

12. The Court finds it to be unnecessary to appoint any Interim Lead Plaintiff at this time. The Court shall make a final determination regarding the identity of any Class Representatives pursuant to a motion for class certification or otherwise as the Court deems necessary and appropriate

**APPOINTMENT OF INTERIM CLASS COUNSEL**

13. Milberg LLP and Zimmerman Reed P.L.L.P. are appointed Interim Co-Lead Class Counsel. Lockridge Grindal Nauen P.L.L.P. and Harwood Feffer LLP are appointed to the Executive Committee of Class Counsel. Co-Lead Counsel, in consultation with the Executive Committee, shall have the responsibilities and authority as follows:

- directing, coordinating, and supervising the prosecution of plaintiffs' claims in the Consolidated Action;
- retaining experts;
- communicating with the Court;
- communicating with defense counsel;
- conducting settlement negotiations;
- collecting and reviewing time and expense records from all plaintiffs' counsel;
- maintaining communication and promoting efficient and harmonious dealings among all plaintiffs' counsel; and
- coordinating activities to avoid duplication and inefficiency in the filing, serving and/or implementation of pleadings, other court papers, discovery papers, and discovery practice, and, generally, in the litigation.

14. No motion shall be initiated or filed on behalf of any plaintiff in the Consolidated Action except through Co-Lead Counsel.

15. All plaintiffs' counsel shall keep contemporaneous time and expense records and shall provide such records upon request to Co-Lead Counsel.

**SCOPE OF ORDER**

16. The terms of this Order shall not have the effect of making any person, firm or entity a party to any action in which he, she or it has not been named, served, or added as such in accordance with the Federal Rules of Civil Procedure.

**PRELIMINARY SCHEDULE OF PROCEEDINGS**

17. To the extent that they have not already done so, Co-Lead Counsel and counsel for the Defendants shall confer regarding (i) the production of certain Plan-related documents; (ii) the filing of a Consolidated Complaint; (iii) Defendants' response to the Consolidated Complaint; and (iv) a briefing schedule if Defendants file a motion in response to the Consolidated Complaint. The parties shall submit the proposed briefing schedule for the Court's approval.

**SO ORDERED:**

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United States District Judge

DATED: \_\_\_\_\_